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**THIS DISPOSITION
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Paper No. 12
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cimmetry Systems Inc.

Serial No. 75/465,988

Lawrence E. Abelman of Abelman, Frayne & Schwab for
Cimmetry Systems Inc.

Leslie L. Richards, Trademark Examining Attorney, Law
Office 106 (Mary I. Sparrow, Managing Attorney).

Before Quinn, Hairston and Walters, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Cimmetry Systems Inc. has appealed from the final
refusal of the Trademark Examining Attorney to register the
mark CIMMETRY for the following goods and services:

computer software for use in document format
support, namely document display, document
printing, file access, network file access,
linking files, markup, all in file formats,
consolidation of files; viewing, downloading
and printing files from a global computer
network; and viewing, copying and printing
e-mail attachments to documents in class 9;

computer education and training services in class 41; and

technical support for others in the field of computers; computer consultation; custom design of computer software for others in class 42.¹

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if used in connection with the identified goods and services, would so resemble the mark SYMMETRY registered for "computers,"² as to be likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

It is the Examining Attorney's position that applicant's mark CIMMETRY and the cited mark SYMMETRY are similar in appearance and are phonetic equivalents. Further, the Examining Attorney argues that the computer software and computer services applicant intends to offer under the involved mark are related to registrant's computers. In connection with the refusal, the Examining Attorney submitted copies of eighteen third-party registrations of marks which cover computer software,

¹ Serial No. 75/465,988 filed April 10, 1988; asserting a bona fide intention to use the mark in commerce.

² Registration No. 1,496,641 issued July 19, 1988; Section 8 affidavit accepted; Section 15 affidavit received.

computer education and training services, computer consultation services, and/or computer software design for others, on the one hand, and computers, on the other hand. This evidence was submitted to support the Examining Attorney's position that the same entities offer computers as well as computer software and the various computer services applicant intends to offer under the same mark.

Applicant, in urging reversal of the refusal to register, contends that the marks are dissimilar; that its computer software and computer services are different from registrant's computers; that the relevant purchasers of its goods and services use a high degree of care; and that registrant's SYMMETRY mark is entitled to only a narrow scope of protection. Applicant submitted copies of four third-party registrations of marks which include the word SYMMETRY.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 2357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. Federated Food, Inc. v. Fort

Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Comparing the marks, we agree with the Examining Attorney that applicant's mark CIMMETRY is the phonetic equivalent of and is similar in appearance (albeit spelled differently) to the cited mark SYMMETRY. Although applicant argues that any possibility of confusion will be dispelled because the cited mark SYMMETRY has a recognized meaning whereas its mark CIMMETRY is a coined term, we disagree. When the marks are verbalized, they are identical.

We note that this is unlike the situation in Serial No. 75/465,820 wherein the mark applicant seeks to register is CIMMETRY SYSTEMS along with a prominent design incorporating the letters "CS". In the case before us, we have only the word CIMMETRY. The identity of pronunciation and similarity in appearance to the mark in the cited registration tips the balance in this case to a conclusion that the overall commercial impressions of the marks herein are substantially similar.

Applicant's contention that the cited mark is weak, and thus entitled to a narrow scope of protection is not supported by the record in this case. None of the third-party SYMMETRY registrations submitted by applicant cover

goods and services of the type involved in this appeal or goods and services which are even arguably related thereto.

Turning then to the goods and services involved herein, it is well settled that goods and/or services need not be identical or even competitive in nature to support a finding of likelihood of confusion. Instead, it is sufficient that the goods and/or services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

We readily acknowledge that there is no "per se" rule relating to likelihood of confusion in the computer field. However, as noted above, the Examining Attorney made of record a number of third-party registrations demonstrating that computers, on the one hand, and computer software and applicant's various computer services, on the other hand, are commonly offered by a single source under a single mark. While the involved goods and services are specifically different, we find this evidence establishes

that registrant's goods and applicant's goods and services are sufficiently commercially related that confusion is likely in view of the substantial similarity in the marks herein.

Applicant's contention that its goods and services will move in different channels of trade to different purchasers is not persuasive. In the absence of any convincing evidence to the contrary, we think it reasonable to assume that the companies to which applicant's computer software and computer services will be offered, i.e., Fortune 1000 companies and small businesses, would also be customers for registrant's computers.

We note applicant's attorney's point that its computer software and computer services are of a specialized nature and that the purchasers thereof are likely to be sophisticated. Suffice it to say that no evidence in support of these assertions was submitted. In any event, even careful purchasers are not immune from source confusion.

To the extent that the points raised by applicant may cast doubt on our ultimate conclusion on the issue of likelihood of confusion, we resolve that doubt, as we must, in favor of the prior registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Accordingly, we find that there is a likelihood of confusion in this case because the marks are identical in sound and somewhat similar in appearance and the goods and services and related. In particular, purchasers familiar with registrant's SYMMETRY computers, would be likely to believe, upon encountering applicant's CIMMETRY mark for computer software for use in document format support and various computer services, that such goods and services emanate from or are otherwise sponsored by or affiliated with the same source.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.